

DATED 27th January 2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) HAMPSHIRE COUNTY COUNCIL

and

(3) STEVEN WALTER HAMILTON MASON, MELANIE JEAN FLINT and TIMOTHY NELSON
MASON

and

(4) MELANIE JEAN FLINT

AGREEMENT

Under Section 106 Town and Country Planning Act 1990
relating to land at Lower Road, Bedhampton, Havant

THIS AGREEMENT is made on

27th January

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant, PO9 2AX (**Council**);
2. **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ (**County Council**);
3. **STEVEN WALTER HAMILTON MASON** of South Hold Farm, Rowlands Castle, Hampshire, PO9 6EL, and **MELANIE JEAN FLINT** of 20 Barham Road, Petersfield, Hampshire, GU32 3EX, and **TIMOTHY NELSON MASON** of Rookwood Cottage, Dean Lane End, Rowlands Castle, Hampshire, PO9 6EL (**First Owner**);
4. **MELANIE JEAN FLINT** of 20 Barham Road, Petersfield, Hampshire, GU32 3EX (**Second Owner**).

BACKGROUND

- (A) For the purposes of the Act, the Council and the County Council are the local planning authorities for the area within which the Land is situated.
- (B) The County Council is also the Local Highway Authority for Hampshire (save for trunk roads and special roads) and the Transport Authority for Hampshire for the purpose of the Transport Act 1985 and 2000.
- (C) The First Owner is the freehold owner of the land registered under title number HP510139.
- (D) The Second Owner is the freehold owner of the land registered under title number SH11549.
- (E) The First Owner and Second Owner are together the freehold owners of the whole of the Land.
- (F) Bargate Homes Limited has submitted the Application to the Council for permission to develop the Land in accordance with the Planning Permission.
- (G) On the 26 March 2020 the Council refused to grant planning permission pursuant to the Application and on 8 September 2020 Bargate Homes Limited submitted the Appeal.
- (H) The parties have agreed to enter into this Agreement to secure the planning obligations required to regulate and mitigate the impacts of the Development, in contemplation that the Secretary of State may grant Planning Permission pursuant to the Appeal.
- (I) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council against the Owners and their successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply to this Agreement and Background:

"Act"	means the Town and Country Planning Act 1990
"Affordable Dwellings"	means 15 Dwellings constructed on the Land to be provided as units of Affordable Housing as part of the Development and in accordance with the Affordable Housing Mix and the Affordable Housing Plan
"Affordable Housing"	means Dwellings that: (a) meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents; and (b) includes provisions for the Dwelling to remain at an affordable cost for future Eligible Persons
"Affordable Housing Land"	means that part of the Land on which the Affordable Dwellings (including their curtilage and any common parts) will be constructed
"Affordable Housing Mix"	means the mix of Affordable Dwellings, in terms of the number, size and tenure and set out at paragraph 1 of Schedule 1 or such other number, size and tenure as agreed in writing with the Council
"Affordable Housing Plan"	means the plan with drawing number 102-P identifying the location and tenure of the Affordable Dwellings at Appendix 2 to this Agreement or such other alternative plan as may be agreed in writing with the Council
"Affordable Housing Provider"	means either one or a combination of: (a) a body registered as a provider of social housing with the Social Housing Regulator under Part 2 of the Housing and Regeneration Act 2008 or such other class of body approved by the Council as may be constituted under any legislation replacing that provision; or (b) such other body eligible to receive grant monies from the Council or Homes England and able lawfully to own or manage housing for Eligible Persons and approved by the Council; or (c) any company or organisation specialising in the delivery of Affordable Housing and approved by the Council
"Affordable Rent"	means rent inclusive of service charge which does not exceed the lower of: (a) 80% of the local gross open market rent; and (b) the local housing allowance rates unless otherwise agreed in writing with the Council;

and shall only be increased annually in accordance with arrangements made for such rent increases established by Homes England

"Affordable Rented Dwellings"

means any Affordable Dwellings let on a fixed term tenancy agreement at an Affordable Rent

"Agreement"

means this deed of agreement

"Allotments"

means an allotment garden or gardens as defined in section 22 of the Allotments Act 1922 but which is for the avoidance of doubt not a statutory allotment

"Appeal"

means the planning appeal submitted to the Secretary of State as referred to in recital (G) and registered with the Planning Inspectorate under reference APP/X1735/W/20/3259067.

"Application"

means the application submitted by the Owners to the Council for planning permission to carry out the Development and given the Council's reference number APP/19/00427

"Approved Matters"

means any facilities, services, project work or infrastructure relating to the Development which this Agreement authorises the Contributions to be applied

"Bond"

means a bond issued by a Surety in the form annexed at Appendix 6 to this Agreement (or such other form as the Council shall approve) for the Bond Amount

"Bond Amount"

means 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2

"Cash Deposit"

means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with Schedule 2

"Children's Allotments"

means approximately 600 sqm forming part of the Open Space Land to be laid out as an Allotment and intended for use by children and in accordance with the details approved in writing by the Council

"Commencement of Development"

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services and the formation of any temporary access from the highway for use by construction traffic, and "Commence" and similar expressions shall be construed accordingly

"Common Parts"

means the parts of the Land which are intended to benefit the occupiers of the Dwellings as a whole or to enhance their occupation and shall without prejudice to the generality thereof include the Permissive Paths, communal parking areas, landscaped areas and street lighting

but do not comprise:

- (a) a Dwelling or the curtilage of a Dwelling; and
- (b) any communal areas forming part of any residential block of flats, such as stairwells, lifts, lighting etc.

"Community Orchard"

means approximately 290 sqm forming part of the Open Space Land to be laid out and intended for use as a community orchard for the planting of fruit and nut trees in accordance with details to be approved in writing by the Council

"Community Project Worker Contribution"

means the sum of £12,500 as a contribution towards the provision of a suitably qualified and experienced person employed by the Council to assist in the establishment of a successful and cohesive local community within the Development and to promote integration with existing communities in the vicinity of the Development

"Completion Certificate Standard"

means in the case of the Highway Works completion to the full satisfaction of the County Council as evidenced by the issue of a certificate of completion by the County Council pursuant to a related Highways Agreement

"Contributions"

means all of the following:

- (a) Community Project Worker Contribution;
- (b) Highway Works Contribution;
- (c) Health Contribution;
- (d) SRMS Contribution; and
- (e) SWBGS Contribution

"CPI"

means the consumer prices index published by the Office of National Statistics

"Development"

means the erection of 50 Dwellings together with the provision of access, landscaping and Open Space Land in accordance with the Planning Permission.

"Disposal"

means in relation to each Dwelling means:

- (a) the first Occupation by anyone permitted or suffered to Occupy the Dwelling whether by:
 - i. a person who has acquired or has contracted to acquire any of the estates further defined in

this definition at (b) (c) and (d) below in the Dwelling; or

II. a person who otherwise Occupies the Dwelling;

(b) the creation of a legal term of years in respect of the Dwelling; or

(c) the transfer of a freehold interest in respect of the Dwelling; or

(d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002

whichever shall first occur;

and "Dispose" and "Disposed of" shall be construed accordingly

"Dwelling"

means a self-contained unit of residential accommodation (including houses, flats and maisonettes) constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly

"Eligible Persons"

means persons with a Local Connection who are unable to afford housing accommodation on the open market (whether by renting or purchasing) within the administrative area of the Council and the expression "Eligible Person" shall be construed accordingly.

"Expert"

means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience in the area of expertise relevant to the dispute and appointed in accordance with the provisions of clause 10 to determine a dispute.

"Health Contribution"

means the sum of £8,000 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Land to accommodate the increased demand for such services as a result of the Development.

"Help to Buy Agent"

means the body nominated by the Homes England to be responsible for Low Cost Home Ownership Dwellings nominations within the administrative area of the Council or in the event that nobody has been nominated such other body or organisation as the Council shall first approve in writing.

"Highways Agreement"

means an agreement made under (inter alia) section 278 and/or section 38 of the Highways Act 1980 to secure the Highway Works.

"Highway Works"

means construction of a bellmouth access into the Development and footway connections to Lodge Road as shown in principle on drawing 5992:601 C attached as Appendix 4 to this Agreement.

"Highway Works Contribution"

means the sum of £23,489 payable to the County Council as a contribution towards improvement works to the junction of Bedhampton Road with Kings Croft Land and at the junction to Brookside, Bidbury Lane and such other improvement works required as a consequence of the Development as shown in principle on drawing ITB12174-GA-007 A attached as Appendix 5 to this Agreement.

"Homes England"

means the body corporate charged under the Housing and Regeneration Act 2008 with the functions of regulating the provision of Affordable Housing within the Council's administrative area by any registered provider or if such body ceases to exist or is superseded or any such successor body or organisation.

"Index"

means either:

- (a) CPI in respect of all financial obligations payable to the Council (except for the SRMS Contribution where RPI (All Items) shall apply); or
- (b) RPI (All Items) in respect of all financial obligations payable to the County Council;

and where no index is specified CPI shall apply.

"Index Linked"

means increased in accordance with the following formula:

Amount payable = the payment specified in this Agreement x (A/B) where:

A = the last figure published for the Index that applied immediately preceding the date that payment was due

B = the last figure published for the Index that applied immediately prior to the date of this Agreement

"Interest"

means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time

"Land"

means that part of the freehold property known as land on the south side of Lower Road, Bedhampton, Havant shown edged red on the Plan (excluding any highway land) and registered at the Land Registry with title numbers HP510139 and SH11549.

"Local Connection"

means a connection to the administrative area of the Council by virtue of:

- (a) existing or previous residence;
- (b) employment;

(c) close family links through parents, siblings or offspring;
or

(d) any other connection as agreed with the Affordable Housing Provider and the Council.

"Low Cost Home Ownership Dwellings"

means Help to Buy products as defined by Homes England including Shared Ownership Dwellings

"Management Agreement"

means an agreement made between the Owners and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan

"Management Company"

means a company limited by guarantee or by shares and established in accordance with the provisions of Schedule 2 to be charged with implementing and performing the obligations as contained within the Management Plan

"Management Plan"

means a plan for the maintenance and management of all of the following:

- (a) the Common Parts;
- (b) the Open Space Land; and
- (c) the SuDs

for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owners and approved by the Council in accordance with the provisions of Schedule 2

"Monitoring Fee"

means the sum of £10,000 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person whose function is to monitor, coordinate and enforce the obligations contained within this Agreement

"Occupation"

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be similarly construed

"Open Market Dwellings"

means Dwellings which are not Affordable Dwellings

"Open Space Land"

means the public open space land including the Children's Allotments and Community Orchard to be provided as part of the Development having an area of 1.59 hectares and shown on drawing number 102-P at Appendix 3 to this Agreement.

* coloured blue M.I

"Owners"	means the First Owner and Second Owner together
"Permissive Paths"	means any unadopted road, footpath, footway or other means of access constructed on the Land to serve the Development and the public
"Plan"	means the site location plan attached at Appendix 1 to this Agreement with drawing number 17.043.100 revision A.
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application
"RPI (All Items)"	means the All Items Index of Retail Prices published by the Office of National Statistics.
"Shared Ownership Dwellings"	means Affordable Housing leased to Eligible Persons on terms that permit part purchase of the open market value of the equity in the relevant Affordable Dwelling with rent payable on the unpurchased percentage equity retained by the Affordable Housing Provider, together with the opportunity for the lessee to purchase up to 100% of the equity of the Affordable Dwelling at a later date
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy
"Solent Recreation Mitigation Strategy (SRMS)"	means the framework to mitigate potential impacts on the Solent Special Protection Areas from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy
"Solent Wader and Brent Goose Strategy"	means the framework to conserve, protect, mitigate and manage impacts of development upon Brent Geese and Solent Waders
"SRMS Contribution"	means the sum of £33,975.70 payable to the Council as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy
"SuDs"	means a sustainable drainage system for the Development in accordance with the specification agreed in writing by the Council
"Surety"	means a bank or other financial institution as may be nominated by the Owners and approved by the Council for the Bond

"SWBGS Contribution"

means the sum of £329,036.40 payable to the Council as a contribution towards measures to mitigate against the loss of the Land as a secondary support habitat for Solent Waders and Brent Geese in accordance with the Solent Wader and Brent Goose Strategy

"Working Day"

a day other than a Saturday or Sunday or public holiday in England

2 INTERPRETATION

- 2.1 The clause and paragraph headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council and County Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.
- 2.13 Whenever this Agreement requires the agreement approval confirmation or consent of the parties such approval or consent is not to be unreasonably withheld or delayed and the parties shall take a reasonable approach.

3 STATUTORY PROVISIONS

3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of those sections of the Act and are enforceable by the Council and the County Council.

3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT OF AGREEMENT

4.1 This Agreement shall come into effect from the date hereof.

5 OWNER COUNCIL AND COUNTY COUNCIL COVENANTS

5.1 The Owners covenant with the Council and the County Council to comply, observe and perform the obligations as set out in this Agreement and its Schedules.

5.2 The Council and County Council covenant with the Owners to comply, observe and perform their respective covenants as secured by this Agreement and its Schedules.

6 REGISTRATION

This Agreement shall be registered by the Council as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

7 RELEASE

7.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

7.2 No planning obligation contained in this Agreement shall be binding on any land held by any of the statutory undertakers for their statutory functions.

7.3 Any legal charge entered into in respect of the Land or any part of the Land after this Agreement has been completed shall take effect subject to this Agreement PROVIDED THAT the mortgagee under such a legal charge shall have no liability under this Agreement unless it becomes a mortgagee in possession of all or any part of the Land in which case the mortgagee shall be bound by the obligations in this Agreement.

8 NOTICES

8.1 The Owners agree with the Council and County Council to give the Council and County Council written notice within 10 Working Days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee Owner is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan provided that written notice is not required on the disposal of any individual Dwelling.

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service and in the case of service upon the Council and the County Council shall be marked for the attention of the Head of Legal.

8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owners shall pay to the Council and the County Council their reasonable and proper legal costs, in connection with the preparation, negotiation and completion of this Agreement together with the County Council's development control costs of one thousand one hundred and thirty-five pounds (£1,135).

10 DETERMINATION OF DISPUTES

10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than 10 Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

10.3 The Expert shall act as an independent expert and:

10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

- 10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and
- 10.3.6 the Expert shall use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.
- 10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.
- 10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.
- 11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.
- 12 INDEXATION**
- 12.1 All sums payable pursuant to this Agreement shall be Index Linked.
- 12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council or the County Council (as appropriate) shall advise the Owner in writing.
- 13 INTEREST**
- If any sum due under this Agreement is paid late Interest will be payable from the date payment is due until the date of payment.
- 14 VAT**
- The parties to this Agreement acknowledge and agree the financial contributions in this Agreement are not subject to VAT and no VAT should be charged or recoverable in addition to the amount of the financial contributions specified in the Agreement.
- 15 WAIVER**

No failure or delay by the Council or County Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver (whether express or implied) for any breach or default by the Owners in performing or observing any of the covenants, restrictions or obligation contained in this Agreement. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16 SEVERABILITY

- 16.1 In the event that the Secretary of State (or his appointed Inspector) determining the Appeal expressly states in his decision letter that any individual planning obligation secured by this Agreement does not comply with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, such that it does not constitute a reason for granting Planning Permission or shall not be accorded any weight, then that obligation or those obligations shall cease to apply and shall be unenforceable notwithstanding that the remaining provisions of this Agreement shall remain in full force and effect.

17 TERMINATION

- 17.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if the Secretary of State (or his appointed Inspector) dismisses the Appeal or before the Commencement of Development, the Planning Permission;

17.1.1 expires;

17.1.2 is revoked; or

17.1.3 is modified without the consent of the Owners; or

17.1.4 is quashed following a successful legal challenge.

18 FUTURE PERMISSIONS

- 18.1 Subject to clause 18.2, nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.
- 18.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission (a "Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council.

19 JURISDICTION

- 19.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 19.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

20 SPEND IN ADVANCE

- 20.1 The Council and the County Council are entitled at their sole discretion to:

20.1.1 enter into contractual arrangements;

20.1.2 incur expenditure, including but not limited to any design costs; and/or

20.1.3 commence works,

in respect of any Approved Matters at any time, even if the trigger point for the payment of the relevant Contribution has not yet arisen.

20.2 If the Council and/or the County Council exercises its right under clause 20.1:

20.2.1 the Council and/or the County Council may immediately following receipt of any Contribution, deduct from the Contribution a sum equivalent to the amount of expenditure or liability incurred (Deduction); and

20.2.2 the Council and/or the County Council shall not be required to repay any Deduction or account for any interest accrued on it; and

20.2.3 any such Deduction shall be and remain the property of the Council and/or County Council and shall not be bound by the terms of this Agreement.

IN WITNESS of which this document has been duly executed as a deed and delivered on the date stated at the beginning of this document.

SCHEDULE 1

Affordable Housing

The Owners covenant with the Council as follows:

1 AFFORDABLE HOUSING MIX

- 1.1 To provide the Affordable Dwellings as part of the Development in accordance with the Affordable Housing Mix.
- 1.2 That the Affordable Housing Mix shall consist of:
 - 1.2.1 10 Affordable Rented Dwellings; and
 - 1.2.2 5 Shared Ownership Dwellings; or
 - 1.2.3 such other mix of type, tenure and numbers as may be agreed in writing with the Council at its absolute discretion.

2 AFFORDABLE DWELLINGS

- 2.1 To ensure that the Affordable Dwellings within the Development will be compatible with the design of the Open Market Dwellings.
- 2.2 Not to Dispose nor permit Disposal of more than 20 Open Market Dwellings until the Affordable Housing Land has been transferred to an Affordable Housing Provider by either a transfer or transfers of the freehold interest or the creation of long leasehold interests with a term of not less than 125 years.
- 2.3 Not to Dispose nor permit Disposal of more than 30 Open Market Dwellings until the Affordable Dwellings are completed and are ready for Occupation
- 2.4 Subject to paragraphs 3 and 4 below not to allow or permit Occupation of any Affordable Dwellings for any purpose other than as Affordable Housing for Occupation by Eligible Persons.
- 2.5 Not to let or transfer any Low Cost Home Ownership Dwellings to persons other than persons nominated by the Help to Buy Agent.
- 2.6 Not to let any Affordable Rented Dwellings to persons other than persons nominated by the Council.
- 2.7 That the deed of transfer or lease (as applicable) to the Affordable Housing Provider of the Affordable Dwellings shall contain the following (or such other alternative provisions as the Council may agree in writing):
 - 2.7.1 a covenant not to use the Affordable Dwellings otherwise than for the provision of Affordable Housing; and
 - 2.7.2 a covenant not to Dispose of any of the Affordable Dwellings other than for the purpose of providing Affordable Housing to Eligible Persons; and
 - 2.7.3 a covenant requiring the Affordable Housing Provider to enter into an agreement with the Council granting the Council the right to nominate 100% of the Occupiers of the Affordable Rented Dwellings when initially let and all subsequent true voids

or such alternative provisions as may be agreed by the Council in writing.

3 100% EQUITY SHARE

The provisions in paragraphs 2 of Schedule 1 shall cease to have effect in respect of any Affordable Dwelling where a leaseholder of an Affordable Dwelling (or its mortgagee) held as a Low Cost Home Ownership Dwelling has purchased 100% of the equity in the Dwelling or in respect of any Dwelling where the occupier has exercised a statutory right to buy or a right to acquire in respect of such Dwelling including any successor in title to any of the above.

4 CHARGEES IN POSSESSION

4.1 For the purpose of this paragraph Chargee means:

- any mortgagee or chargee;
- any receiver, administrative receiver or administrator appointed under the Law of Property Act 1925;
- any housing administrator appointed under the Housing and Planning Act 2016; or
- any other person appointed under any security document to enable a chargee or mortgagee to realise its security

of the Affordable Housing Provider and the whole or any one or more of the Affordable Dwellings.

4.2 The provisions of this Agreement relating to Affordable Dwellings shall not be binding on a Chargee (or any person or bodies deriving title through such Chargee) PROVIDED THAT the Chargee will have first:

- 4.2.1 given written notice to the Council of its intention to exercise its powers of sale to Dispose of any of the Affordable Dwellings ("Notice"); and
- 4.2.2 used reasonable endeavours over a period of three months from the date the Notice is served to complete a Disposal of the relevant Affordable Dwelling(s) to either:
 - another Affordable Housing Provider; or
 - to the Council.

4.3 Any Disposal referred to in paragraph 4.2.2 shall be for a consideration not less than the amount properly due and outstanding under the terms of the Chargee's relevant security documentation. This sum shall include all accrued principal monies, interest and the Chargee's reasonable costs and expenses.

4.4 In the event that a Disposal referred to in paragraph 4.2 shall not have been completed within the period of three months referred to in paragraph 4.2.2, the Chargee will be entitled to Dispose of the relevant Affordable Dwelling(s) free from the provisions of this Agreement relating to Affordable Housing which shall determine absolutely in respect of the relevant Affordable Dwelling(s).

4.5 For the avoidance of doubt in respect of the relevant Affordable Dwelling(s) Disposed of in accordance with paragraph 4.4 above the purchaser shall not be subject to the obligations of this Schedule 1 to this Agreement

SCHEDULE 2

MANAGEMENT OF DEVELOPMENT

The Owners (and the Council where relevant) covenant as follows:

1 MANAGEMENT COMPANY AND MANAGEMENT PLAN

- 1.1 Not later than three months following Commencement of Development the Owners shall submit for approval the Owners' proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.
- 1.2 The Council covenants that it will notify the Owners that it either approves or rejects the proposal referred to in paragraph 1.1 of Schedule 2 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owners within the aforementioned time period, the Owners shall continue to comply with the obligation at paragraph 1.1 of Schedule 2 until such time as the Council approves the proposal or deemed approval applies.
- 1.3 Not later than six months following Commencement of the Development to submit to the Council in writing the Owners' proposal for the Management Plan.
- 1.4 The Council covenants that it will notify the Owners that it either approves or rejects the proposal referred to in paragraph 1.3 of Schedule 2 within one month of receipt. If notification is not received within that time, the proposal/s will be deemed to be approved. If notification of a refusal is received by the Owners within the aforementioned time period, the Owners shall submit a further proposal or proposals until such time as the Council approves the proposal or deemed approval applies.
- 1.5 Not later than six months from the later of Commencement of the Development and approval of the proposals by the Council pursuant to paragraph 1.2 above, the Owners shall take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Management Company.
- 1.6 Not to allow or permit Disposal of any Dwelling until:
 - 1.6.1 the Management Company has been formed in accordance with the approved or deemed approved proposal; and
 - 1.6.2 the Management Plan has been approved in writing or deemed approved by the Council.
- 1.7 To secure the proper maintenance of the Common Parts, Open Space Land and SuDs to the reasonable satisfaction of the Council following their laying out or construction until such time as:
 - 1.7.1 the Management Company is registered and the Management Plan has been approved or deemed approved by the Council; and
 - 1.7.2 the maintenance arrangements for the Common Parts, Open Space Land and SuDs in accordance with the Management Plan have been implemented; and

- 1.7.3 the transfer or the granting of a long leasehold interest of the Common Parts, Open Space Land and SuDs to the Management Company is completed; or
- 1.7.4 the transfer or the granting of a long leasehold interest of Common Parts, Open Space Land is completed, and the SuDs is adopted by a statutory undertaker.
- 1.8 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owners shall (without prejudice to any other right or remedy of the Owners against the Management Company or any other person) perform the said covenants and obligations until the appointment by the Owners of a successor to the Management Company.
- 2 OPEN SPACE LAND**
 - 2.1 Not to Occupy or permit Occupation of more than forty-nine (49) Dwellings until the Open Space Land shall have been laid out in accordance with the details approved in writing by the Council.
 - 2.2 To include in any transfer or lease of the Open Space Land:
 - 2.2.1 covenants in favour of the remainder of the Land restricting the use of the Open Space Land (other than the Children's Allotments) for the purpose of public recreation only;
 - 2.2.2 covenants in favour of the remainder of the Land to restrict the use of the Children's Allotments to use as an Allotment; and
 - 2.2.3 sufficient covenants so as to ensure future access for owner occupiers of the Dwellings and the public to the Open Space Land in perpetuity.
- 3 PERMISSIVE PATHS**
 - 3.1 Not to Occupy or permit Occupation of any Dwelling until the Permissive Path(s) serving that Dwelling have been laid out constructed and made available for use in accordance with the details approved by the Council in writing.
 - 3.2 To ensure that the Permissive Paths following construction are available for use by owner-occupiers of the Dwellings and the public at large and to include in any transfer or lease of the Permissive Paths covenants requiring the Permissive Paths to be made and kept available for use by the public in perpetuity.
- 4 SUDS**
 - 4.1 Prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.
 - 4.2 The Council covenants that it shall within ten Working Days notify the Owners that it either approves the bill of quantities for the SuDs as submitted or proposes such reasonable amendments as are considered necessary. In the event that the Council fails to respond to the bill of quantities for the SuDs within ten Working Days of receipt, the bill of quantities as submitted are to be deemed approved.
 - 4.3 Where reasonable amendments to the open book construction costs for the SuDs are proposed by the Council, the Owner shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities for the SuDs in accordance with the proposed amendments.

4.4 On or before Commencement of Development to:

4.4.1 provide to the Council a Bond for the Bond Amount; or

4.4.2 pay the Cash Deposit.

4.5 the Bond shall endure, or the Cash Deposit shall be retained by the Council until:

4.5.1 the SuDS are adopted by a statutory undertaker; or

4.5.2 the SuDs are transferred to a Management Company; or

4.5.3 if earlier the date of completion of construction of the SuDS to the reasonable satisfaction of the Council

following which the unexpended Bond or Cash Deposit shall be immediately released to the party that paid the same (with, in the case of the Cash Deposit, accrued interest).

4.6 If:

i) the Owners have completed the construction of the SuDs but have failed to construct the SuDs in accordance with the details as approved by the Council in writing; or

ii) prior to completion of the SuDs the Owners are adjudicated bankrupt or go into liquidation voluntarily or otherwise; or

iii) the Owners have executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

the Council may (without prejudice to the Council's other rights remedies and powers against the Owners):

- by written notice require the Surety to pay for; or
- the Cash Deposit may be applied to:

any reasonable and proper expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owners's design to return the Land to the level of hydrological response as existed before the Commencement of the Development.

SCHEDULE 3

Contributions

The Owners covenant with the Council (and the County Council in respect of paragraph 5) as follows:

1 MONITORING FEE

Not to Commence or permit Commencement of Development until the Monitoring Fee has been paid to the Council.

2 COMMUNITY PROJECT WORKER CONTRIBUTION

Not to Dispose or permit Disposal of more than five Dwellings until the Community Project Worker Contribution has been paid to the Council.

3 SRMS CONTRIBUTION

Not to Commence or permit Commencement of Development until the SRMS Contribution has been paid to the Council.

4 HEALTH CONTRIBUTION

Not to Dispose or permit Disposal of any Dwellings until the Health Contribution has been paid to the Council.

5 HIGHWAY WORKS CONTRIBUTION

Not to Commence or permit Commencement of Development until the Highway Works Contribution has been paid to the County Council.

6 SWBGS CONTRIBUTION

Not to Commence or permit Commencement of Development until the SWBGS Contribution has been paid to the Council.

SCHEDULE 4

Miscellaneous Covenants

The Owners covenant with the Council in respect of paragraphs 1 and 2, and the County Council in respect of paragraph 1, 2 and 3 as follows:

1 COMMENCEMENT OF DEVELOPMENT

To give to the Council and County Council not less than ten Working Days written notice of their intention to Commence Development.

2 SUBMISSION OF DOCUMENTS

To provide when submitting documents or details to the Council and/or County Council pursuant to the Schedules of this Agreement a reference to the Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council and/or the County Council.

3 HIGHWAY WORKS

3.1 Prior to Commencement of Development to enter into a Highways Agreement with the County Council for the Highway Works.

3.2 Not to Commence or permit Commencement of Development until the Owners have entered into a Highways Agreement with the County Council for the Highway Works.

3.3 To carry out and complete the Highway Works to Completion Certificate Standard in accordance with the Highways Agreement.

3.4 Not to Occupy or permit Occupation of any Dwelling on the Land until the Highway Works have been completed in accordance with the Highways Agreement to Completion Certificate Standard SAVE where the County Council has granted written consent in advance of any such Occupation and specified the Dwelling(s) in the Development which may be so Occupied.

SCHEDULE 5

Council and County Council Covenants

1 COUNCIL COVENANTS

- 1.1 The Council covenants to use the Contributions (other than the Highway Works Contribution) received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owners and the Council shall agree.
- 1.2 The Council covenants that in the event that the Council has not expended or committed for expenditure the Contributions received in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the Council of such payment (save for the Bond which shall be repaid in accordance with the provisions on paragraph 4.5 of Schedule 2) the Council shall upon written demand refund any unspent or unexpended Contribution to the payer of the same promptly together with any accrued interest.
- 1.3 Upon written request from the Owners the Council shall provide to the Owners such evidence as it considers is reasonable to confirm the expenditure of the Contributions.
- 1.4 At the written request of the Owners the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement (other than any ongoing obligations which are not capable of being discharged) when satisfied that such obligations have been performed.

2 COUNTY COUNCIL COVENANTS

- 2.1 The County Council covenants to use the Highway Works Contribution received under the terms of this Agreement for the purposes specified in this Agreement for which it is paid or for such other purposes for the benefit of the Development as the Owners and the County Council shall agree.
- 2.2 The County Council covenants that in the event that the Council has not expended or committed for expenditure the Highway Works Contribution (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten (10) years of the date of receipt by the County Council of such payment the County Council shall upon written demand refund any unspent or unexpended Highway Works Contribution to the payer of the same promptly together with any accrued interest.
- 2.3 Upon written request from the Owners the County Council shall provide to the Owners such evidence as it considers is reasonable to confirm the expenditure of the Highway Works Contribution.
- 2.4 At the written request of the Owners the County Council shall provide written confirmation of the discharge of the obligations contained in this Agreement (other than any ongoing obligations which are not capable of being discharged) when satisfied that such obligations have been performed.

EXECUTED as a DEED by affixing

THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT

in the presence of:

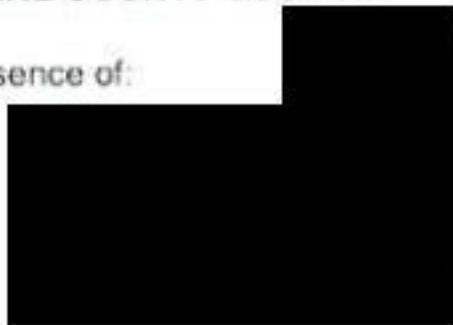


Authorised Signatory

EXECUTED as a DEED by affixing

THE COMMON SEAL of
HAMPSHIRE COUNTY COUNCIL

in the presence of:



Authorised Signatory

Name: *DAVID VELAM.*

Position: *Authorised signatory.*

Executed as a Deed by **MELANIE**

JEAN FLINT in the presence of:

Witness

Name:

Address:

Occupation:

Executed as a Deed by **STEVEN**

WALTER HAMILTON MASON in the

presence of:

Witness

Name:

Address:

Occupation:

Executed as a Deed by **TIMOTHY**

NELSON MASON in the presence of:

Witness

Name:

Address:

Occupation:

OWNER

OWNER

OWNER

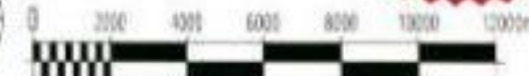
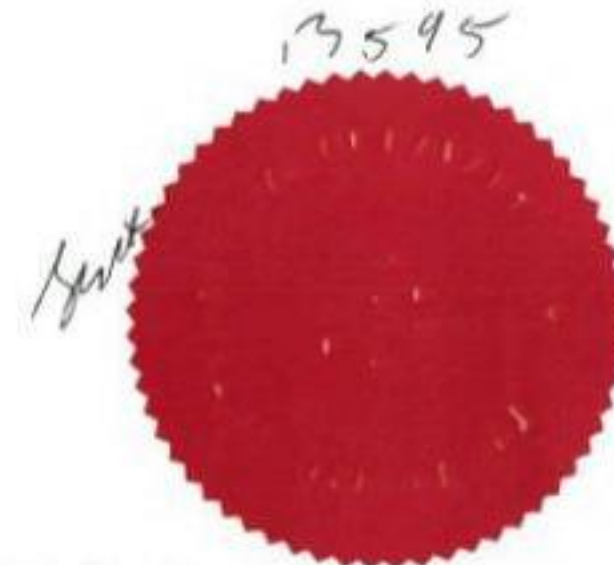
APPENDIX 1
Site Location Plan



37/6273



13595



Revisions

A Changed Scale 05/04/19 TIM/HS

Drawing Status

- ☐ Preliminary
- ☒ Planning
- ☐ Building Regulations
- ☐ Construction

CLIENT



Scale @ A1: 1:2500
Date: June 2018

Drawn by: CWC
Checked by:

TITLE Manor Farm Bedhampton
Location Plan

Drawing No: 17.043.100

Revision:
A



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APPENDIX 2
Affordable Housing Plan

APPENDIX 3
Open Space Land Plan



Refer to drawing nos 1860-1P-00-00-DR-L-1002 to 1006 by Terraforma Landscape Architects

37/6273

135 95

Revisions:
1. Proposed site layout updated with new planning conditions.
2. Proposed site layout updated with new planning conditions.
3. Proposed site layout updated with new planning conditions.
4. Proposed site layout updated with new planning conditions.
5. Proposed site layout updated with new planning conditions.
6. Proposed site layout updated with new planning conditions.
7. Proposed site layout updated with new planning conditions.
8. Proposed site layout updated with new planning conditions.
9. Proposed site layout updated with new planning conditions.
10. Proposed site layout updated with new planning conditions.

Revisions:
1. Proposed site layout updated with new planning conditions.
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4. Proposed site layout updated with new planning conditions.
5. Proposed site layout updated with new planning conditions.
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7. Proposed site layout updated with new planning conditions.
8. Proposed site layout updated with new planning conditions.
9. Proposed site layout updated with new planning conditions.
10. Proposed site layout updated with new planning conditions.

Drawing Status:
☐ Preliminary
☒ Planning
☐ Building Regulations
☐ Construction

Drawing Notes:
For hard and soft landscaping details refer to drawings nos. 1860-1P-00-00-L-1002 - 1006 inclusive by Terraforma Landscape Architects.
To be read in conjunction with HGP Architects Ltd drawing nos. 17-043.100-101, 200-202, 204-223 & 226-227 inclusive.

BARGATE
13.10.13

Project Title:
Manor Farm, Redhampton
Drawing Title:
Proposed Site Layout
Drawing Code / Sheet No:
1/5000A1
Date:
17.04.13



Date:
June 2018
Drawn by / Checked by:
CW/
Signature:
Drawing Number / Revision:
102 - P

HGP
ARCHITECTS



Project Title:
Manor Farm, Redhampton
Drawing Title:
Proposed Site Layout
Drawing Code / Sheet No:
1/5000A1
Date:
17.04.13

APPENDIX 4
Highway Works Plans

APPENDIX 5
HIGHWAY IMPROVEMENT SCHEME

37/6273

JUNCTION OF BEDHAMPTON ROAD WITH KINGS CROFT LANE

EXISTING TACTILE PAVING

ADDITIONAL TACTILE PAVING TO BE PROVIDED

FOOTWAY ADDED

UNCONTROLLED CROSSING WITH DROPPED KERB AND TACTILE PAVING. FOOTWAY TO TIE INTO EXISTING NETWORK

D Sub. Sto

1.5m x 18m (TO A 0.5m OFFSET)

KERB BUILT OUT TO PROVIDE SMALL SECTION OF FOOTWAY ON NORTHERN SIDE TO IMPROVE VISIBILITY

1354

REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. LICENCE No. 10004286. © CROWN COPYRIGHT RESERVED.

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KEY:

HIGHWAY BOUNDARY EXTENTS



Grove House, Lutyens Close, Chineham
Basingstoke, Hampshire, RG24 8AG
Tel: 01256 338640
www.i-transport.co.uk

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DRAWN	CHECKED	APPROVED
MC	SI	SI
PROJECT No	SCALE @ A1	DATE
ITB12174	1:500	12.09.19
DRAWING No		REV
ITB12174-GA-007		A

APPENDIX 6

Form of Bond

The Guarantee Bond is made as a deed between the following parties whose names and addresses are set out in the Schedule to this Bond (the 'Schedule'):

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor to pay the Bond Amount shall be co-extensive with the liability of the Contractor to pay the Damages under the Contract.
- 3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond.
- 4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before Expiry.
- 5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

- 6 The Guarantee Bond and the benefit thereof shall not be transferred or assigned without the
prior written consent of the Guarantor and the Contractor.
- 7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by
virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a
party to it.
- 8 This Guarantee Bond shall be governed by and construed in accordance with the laws of
England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.

The Contractor:

The Guarantor:

The Employer:

The Contract

The Works

The Bond Amount:

The Expiry Date:

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this _____ day of _____ 20xx

Director

EXECUTED as a DEED by affixing the)
COMMON SEAL of xxxxxxxxxx)
BANK)
in the presence of:)